

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant Fago
Serial No. 10/812,041
Filing Date March 29, 2004
Group Art Unit 3767
Confirmation No. 1450
Examiner Carpenter, William R.
Title **APPARATUS AND METHOD FOR MAINTAINING SUSPENDIBLE AGENTS IN SUSPENSION**
Attorney Docket No. 1495 (073979.59)

Cincinnati OH 45202

May 13, 2009

Commissioner for Patents
Post Office Box 1450
Alexandria VA 22313-1450

DECLARATION OF FRANK M. FAGO UNDER 35 C.F.R. § 1.132

I, Frank M. Fago, declare the following:

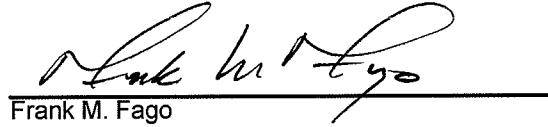
1. I am the inventor of the above-identified patent application.
2. I received my degree in Mechanical and Manufacturing Engineering Technology from Northern Kentucky University. I have over twenty years of experience in medical devices, which is the subject of this application.
3. I have read the outstanding Office Action, the references the Examiner applies to reject my claims Hughes U.S. Patent No. 6,554,792, Hodan U.S. Patent No. 5,137,369 and Hirose U.S. Patent No. 4,869,849. I understand, but disagree with, the Examiner's position.
4. Claim 1 as amended, requires, among other elements,

a suspension apparatus disposed in said fluid path, said suspension apparatus defining a longitudinal axis and including a first longitudinal end in fluid communication with a second longitudinal end, and a plurality of layers disposed between said first longitudinal end and said second longitudinal end, each layer of said plurality of layers including a plurality of circumferential flow channels fluidly coupled by a plurality of radial flow channels, wherein adjacent layers of said plurality of layers are fluidly coupled by at least one axial flow channel, and wherein the suspendible agent is delivered to said exit port after flowing through said plurality of radial flow channels and said plurality of circumferential flow channels when said delivery mechanism is operated to cause the propellant fluid to flow through said fluid path.

7. Hughes in view of Hodan and Hirose do not teach, suggest, or motivate my requirement of each layer of a plurality of layers defining a plurality of circumferential flow channels fluidly coupled by a plurality of radial flow channels.
8. Hodan discloses a static mixer having a stack of plates, where fluid flows from plate to plate generally as shown by the dashed arrows in Fig. 2. Raised islands on each plate create split flows that collide to yield a mixing effect.
9. The Examiner, at p. 10 of the Office Action, has an illustration in which the dashed arrows in Hodan Fig. 2 have been erased and replaced with solid lines that allegedly show circumferential flow channels. The solid lines the Examiner has drawn do not, in my opinion, accurately illustrate the fluid flow achieved in Hodan's plates. To the contrary, Hodan's dashed arrows provide a more accurate illustration of fluid flow.
10. The assertion that Hodan's plates yield circumferential fluid flow defies basic principles of fluid dynamics.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the subject application or any patent issued thereon.

May 13th, 2009
Date
731938



Frank M. Fago